

**DECISION**



**THE COMPTROLLER GENERAL  
OF THE UNITED STATES**  
WASHINGTON, D.C. 20548

60559

FILE: B-185515

DATE: February 24, 1976

MATTER OF: Atlantic Maintenance Company, Inc.

98564

**DIGEST:**

Solicitation provision requiring bid bond in amount of 20 percent of "bid", when read in context of entire bid package, may not reasonably be interpreted as applicable to monthly rather than annual bid total for a one year contract, even though bid schedule called for monthly bid prices. Therefore, notwithstanding low bidder's erroneous interpretation of bid guarantee provision, agency's determination to resolicit bids under corrected specification is not justified and low bid is nonresponsive.

Through invitation for bids (IFB) N62470-76-B-0560 the Norfolk Naval Shipyard solicited bids for janitorial services to be performed at the shipyard in Portsmouth, Virginia. At bid opening on December 9, 1975, the following bids were received:

<u>BIDDER</u>	<u>GRAND TOTAL PER MONTH</u>
CFE Air Cargo, Inc.	\$66,640.37
Atlantic Maintenance Co., Inc.	\$76,932.12
Government Contractors, Inc.	\$81,445.02
Space Services of Georgia, Inc.	\$95,415.58

CFE Air Cargo, Inc. (CFE), provided a cashier's check in the amount of \$13,330 as a bid security. Atlantic Maintenance Company, Inc. (Atlantic), the second low bidder, protested to this Office that the bid of CFE was nonresponsive in that the CFE bid guaranty of \$13,330, while approximately 20 percent of CFE's monthly bid, was only 1.67 percent of the total CFE bid for the required performance period of twelve months. In addition, Atlantic also claims that CFE lacks the experience, capability and financial resources necessary for the contracting officer to determine that CFE is a responsible bidder.

The agency report, in response to the Atlantic allegations, argues that the IFB is ambiguous in its bid guarantee requirements because it variously states the guarantee requirement as 20 percent of the bid, 20 percent of the total bid and 20 percent

of the highest amount for which award can be made. Therefore, the Navy canceled the IFB and readvertised the procurement after correction of the alleged ambiguity. Atlantic has protested this action on the basis that the IFB was not ambiguous and therefore cancellation was not justified. Atlantic contends that it is entitled to the contract award under IFB N62470-76-B-0560 since it is, in its view, the lowest responsive responsible bidder under that solicitation.

The bid security is mentioned in four places in the bid package. The cover of the bid package contained the following legend:

"Your bid must be accompanied by bid security for 20% of the highest amount for which award can be made. See Paragraph 4 of the 'Instructions to Bidders.'"

The Schedule on page 1 of NAVFAC Form 4330/24 contains this statement under the space provided for the grand total per month:

"Bid bond required in the amount of 20% of bid."

Page 2 of the same form states:

"Bid bond in the amount of 20% of total bid required."

Finally, page 18 of the IFB, section 1C.1.A. states:

"Bid guaranty in the amount of 20% of the total bid is required."

The Navy maintains that the statement on the bid Schedule and paragraph 1C.1.A. of the IFB and presumably page 2 of NAVFAC 4330/24 are consistent in requiring a bid bond in the amount of 20 percent of the monthly amount bid. CFE, according to Navy, literally complied with these provisions. The legend on the front of the bid package to the effect that bid security in the amount of 20 percent of the highest amount for which award can be made has reference to a requirement for 20 percent of the amount bid for the twelve-month performance period in the Navy's view. Further, this provision caused more confusion according to Navy, since the direction to see paragraph 4 of Instructions to Bidders is misleading because there is no paragraph 4 in the Instructions. The net effect, Navy argues, is that the IFB is ambiguous as to the bid security requirement.

B-185515

We disagree. Section 1.C.3 states that award will be based on the grand total price of items listed on the Schedule multiplied by 12. A twelve-month contract was contemplated and the term "total bid" would seem to be the twelve-month price, since award was to be made on the twelve-month basis. Any reference to a "total bid" necessarily seems to have reference to the twelve-month price. The legend on the cover of the bid package also clearly referred to the amount to be bid for the entire year's work.

Only the statement on the Schedule poses a problem. The statement that the bid bond was required to be 20 percent of "bid" might be interpreted as the Navy would have it, if one were to look only at the Schedule. If the Schedule were considered in isolation, the statement, "Bid bond required in the amount of 20% of bid" might itself be ambiguous in that a reader could interpret the statement to refer to the grand total price for one month or the price for the twelve-months of performance. However, in the context of a bid package which contemplates a twelve-month contract, which indicates award will be made on a twelve-month basis and which contains two other references to a "total bid" and a third to a highest amount for which award can be made, it seems that the word "bid" in the statement on the face of the Schedule must mean the "total bid" in context, i.e., the total price bid for the twelve-month award. That this conclusion is reasonable is supported by the fact that three out of four bidders on this IFB submitted bid bonds equal to 20 percent of the full twelve-month price. Accordingly, we conclude, contrary to the agency, that no ambiguity existed in the bid documents when viewed as a whole.

Although we will not ordinarily question the exercise of the contracting officer's broad authority to reject all bids and readvertise, 49 Comp. Gen. 584 (1970), we are unable to acquiesce in the readvertisement because we do not believe that there existed a compelling or cogent reason to cancel the initial solicitation. Therefore, the canceled solicitation should be reinstated.

With respect to the initial allegation of Atlantic that the bid of CFE was nonresponsive, we note that CFE provided a cashier's check for 20 percent of one month's price or \$13,330, in lieu of a bond for that amount. We also note that 20 percent of the total bid of CFE, i.e., 20 percent of the monthly price multiplied by 12, would amount to \$159,937.61. Thus, the guaranty proffered by

B-185515

CFE was significantly less than the requirement. In such situations we have held that the failure of a bid to comply with the bid guarantee provisions requires the rejection of the bid as nonresponsive and that the failure may not be waived or otherwise excused. See E. Sprague, Batavia, Inc., B-183082, April 2, 1975, 75-1 CPD 194 and Associated Refuse and Compaction Services, Inc., B-180484, April 17, 1974, 74-1 CPD 201.

Based on the foregoing, we believe that an award should be made on the basis of the solicitation prior to cancellation. The bid of CFE should be rejected as nonresponsive because of its insufficient bid bond. Finally, if otherwise proper, award should be made to Atlantic Maintenance as the low responsive bidder.

  
Deputy Comptroller General  
of the United States